



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**SUCCESSION CAUSE NO. 1 OF 2010**  
**IN THE MATTER OF THE ESTATE OF MOHAMED HASSAN YAA (DECEASED)**

AND

**IN THE MATTER OF: AN APPLICATION FOR REVOCATION**  
**OF GRANT OF LETTERS OF ADMINISTRATION**

HUSSEIN MOHAMED HASSAN YAA.....APPLICANT

AND

HARUSI BINTI HASSAN.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

Richard O. Advocate for the applicant

Respondent in person

**JUDGEMENT**

This matter was referred to the Court pursuant to Summons for revocation of grant filed by the petitioner dated 7.2.2020 in which he sought the following orders:

- 1. That the grant of Letters of Administration intestate to the Estate of Mohammed Hassan Yaa issued to Harusi Binti Hassan in this matter and confirmed on 3.10.2018 be revoked or annulled.***
- 2. That the grant of Letters of Administration intestate made to Abdalla Mohamed Hassan Yaa in High Court Cause No. 23 of 2013 on 12.4.2017 be confirmed.***

In the particulars, the petitioner averred that the deceased **Mohamed Hassan Yaa** died on the 15.9.2005 and a petition for grant of Letters intestate was applied for and made to one **Abdalla – Mohamed Hassan Yaa** in Succession Cause No. 23 of 2013 on the 12.4.2017 as annexed exhibit HMS – 1 confirms. That the said estate is survived by the following beneficiaries:

- |   |   |                        |
|---|---|------------------------|
| <b><i>1. Abdalla Mohamed Hassan Yaa</i></b> | - | <b><i>Son</i></b>      |
| <b><i>2. Saumu Mohamed Hassan Yaa</i></b>   | - | <b><i>Son</i></b>      |
| <b><i>3. Hassan Mohamed Hassan Yaa</i></b>  | - | <b><i>Son</i></b>      |
| <b><i>4. Hussein Mohamed Hassan Yaa</i></b> | - | <b><i>Son</i></b>      |
| <b><i>5. Fatuma Mohamed Hassan</i></b>      | - | <b><i>Daughter</i></b> |

*as confirmed by the Chief's letter dated 27.12.2011*

Following the demise of the deceased a petition for making of the grant of Letters of Administration in Succession Cause No. 23 of 2013 having been issued remained the duly competent proceedings on administration of the Estate intestate.

Surprisingly, in circumstances, which are not clear from the record **Harusi Binti Hassan** also petitioned for grant of Letters Administration in **Succession Cause No. 1 of 2010** seeking to be appointed as an administrator to the Estate of the deceased. In the aforesaid petition it is asserted by **Harusi Binti Hassan** that she is a sister to the deceased and at the time of his death the following heirs are the ones entitled to benefit from the estate:

1. *Madina Hassan Yaa* - *Sister*
2. *Amina Hassan Yaa* - *Sister*
3. *Mwanafuraha Shabani Mohamed* - *Uncle*
4. *Bimkubwa Mohamed Jabu* - *Wife*

She further averred that as one of the close relative of the deceased it entitled her to apply for such a grant pursuant to the provisions of the Law of Succession Act. Indeed, in light of the petition and supporting affidavits a grant of Letters of Administration intestate was issued to **Hamisi Binti Hassan** on 7.7.2020. This was followed with a confirmation of the grant of Letters of Administration on 3.10.2018

#### **Determination**

Having reviewed the affidavits supporting **Succession Cause No. 1 of 2010** alongside with the material in **Succession Cause No. 23 of 2013** the dominant issue is whether the petitioner in Cause No. 1 of 2010 had the locus standi to apply and obtain a grant. The starting point would be the restatement of Section 76 of the Law of Succession which is clear on the subject matter to do with revocation and annulment of the made grant of Letters of administration intestate. The provisions concerning revocation are relevant in so far as the question raised in the Submissions filed on 5.2.2020 as outlined and vesting of the jurisdiction upon this Court to revoke or annul already existing grant of Letters of Administration:

*“(1). That the proceedings to obtain the grant were defective in substance.*

*(2). That the grant was obtained fraudulently by the meaning of a false statement or by concealment from the Court something material to the case.*

*(3). That the grant was obtained by means of untrue allegations of a fact essential in point of Law to justify notwithstanding that the allegation was made in ignorance or inadvertently.*

*(4). That the person to whom the grant was made has failed, after due notice and without reasonable cause either to proceed diligently with the administration of the estate.....”*

As would be seen from the foregoing a petitioner or objector bringing herself or himself within the context of any of the stated grounds under Section 76 of the Act deserves grant of the orders for revocation or annulment of grant of Letters of Administration.

It is well settled by the numerous decisions expressed to justify the provisions under Section 76 of the Act, on this issue. In the matter of the **Estate of Robert Napunyi Wangila P & A No. 2205 of 1999:**

*“A grant of Letters of Administration intestate was revoked on the grounds that the same had been obtained fraudulently. The facts in support of revocation were that the step sister of the deceased who subsequently petitioned for and obtained a grant of letters on the allegation that she was the only survivor of the deceased.”*

Further, in the matter of the **Estate of Yusuf Mohamed (Deceased), Mombasa High Court P & A No. 434 of 1995:**

*“a declaration to make a grant of Letters of Administration to the alleged first born was revoked on grounds that the petitioners falsely alleged that the deceased was summoned by three children only, and that he did not consent to the issue of the grant to the petitioners. The Court found that there were other survivors of the deceased who were not disclosed in the petition and who were not notified of the same and proceeded to revoke the grant.”(See also in the matter of the Estate of Ngati Gatumbi alias James Ngati Gatumbi P & A No. 783 of 1993, Samwel Wafula Wasike v Hudson Simiyu Wafula {1993} LLR CA. In the Estate of Ezekiel Mulanda Masai, P & A No. 4 of 1992.*

The implications arising under Section 76 and the cited authorities point towards a direction that once a petitioner or objector shows that the impugned grant is tainted with any of the grounds in the making of the grant it would be permissible to revoke or annul the said grant of Letters of Administration.

In the Summons of revocation by the petitioner **Hussein Mohammed Hassan Yaa** and accompanying affidavit he has been able to prove that together with his siblings **Abdalla Mohammed, Saumu Mohamed, Hassan Mohamed, Fatuma Mohamed** and **Bimkubwa Mohamed Jabu – widow**, are entitled to an interest in the Estate of the deceased. The Chief’s letter dated 27.12.2011 states clearly that the deceased died and was survived by his wife and children as specified above.

It was also proven that the deceased died intestate. The petitioner therefore brought the application in a representative capacity as a dependant falling under the category of beneficiaries provided for in Section 29 (A) of the Law of Succession Act. That therefore settles the question in regard to the earlier petition in Cause No. 1 of 2010 purporting to identify the deceased’s beneficiaries as **Harusi Binti – Hassan – sister, Mariam Abdalla Katoto – granddaughter, Madina Hassan Yaa – granddaughter, Changawa Masha Chuye – husband**.

The petitioner’s contention in Cause No. 23 of 2013 on allegations that the initial grant of Letters was obtained fraudulently and non-disclosure of relevant material remains unchallenged. In addressing the issue of survivorship its puzzling that the chief’s letter in support of the impugned grant dated 19.1.2010 failed to acknowledge the children of the deceased. There is therefore abundance of evidence on the grant of Letters of Administration in **Succession Cause No. 1 of 2010** being obtained by the petitioner through falsehood, non-disclosure of other dependants and fraudulent assertions.

The authority of the **Law in Rule 26 and 40 (8) of the probate and Administration Rules** do provide as follows:

***“Letters of Administration shall not be granted to any applicant without notice to every person entitled in the same degree as or in priority to the applicant.”***

Considering this Rule and canons of family descent, the petitioners in **Succession Cause No. 23 of 2013** rank in priority to obtain grant of Letters of Administration in contrast with the petitioners in **Succession Cause No. 1 of 2010**. It appears to the Court that the initial petitioners never sought to notify or obtain consents of the children of the deceased as identified in **Succession Cause No. 23 of 2013**. Under these circumstances not only do the proceedings in **Succession Cause No. 1 of 2010** defective but the locus to petition for making of the grant of letters is also questionable.

This is an appropriate case for this Court to exercise discretion in terms of Section 76 of the Act to allow for revocation of grant issued to **Harusi Binti Hassan** on 7.7.2010 and confirmed on 3.10.2018 to be revoked. In that case the petitioner in Succession Cause No. 23 of 2013 is hereby reinstated as the administrator to administer the intestate **Estate of Mohamed Hassan Yaa (Deceased)**.

Accordingly, the petitioner is hereby ordered to file fresh summons for confirmation of grant with the beneficiaries in attendance accompanied by their respective consents. Application dated 5.2.2020 partially allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 23<sup>RD</sup> DAY OF OCTOBER 2020**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of**

1. Mr. Bawazir holding brief for Richard O. Advocate for the appellant